

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5734 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO. LTD.

Versus

JASUBEN VELJI DHILA WD/O VELJINAMORI DHILA

Appearance:

MS LILU K BHAYA for Petitioner
MR SURESH M SHAH for Respondent

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 04/09/2000

ORAL JUDGEMENT

Appeal admitted. Learned advocate Mr. Shah waives service on behalf of respondent No. 1. Upon joint request the First Appeal is taken up for final hearing.

2. This is appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') since the challenge in this appeal is against the compensation on the structured basis under Section 163A of the Act.

3. The Motor Accident Claims Tribunal (Main), Kachchh, at Bhuj, in M.A.C.P. No. 397 of 1996, filed at the instance of the respondents original claimants, passed an award whereby the original claimants came to be granted an amount of Rs. 2,65,500/- with running interest at the rate of 15 per cent per annum from the date of application till deposit under Section 163-A of the Act against the appellant.

4. Since the impugned order under Section 163-A of the Act tantamounts to only interim compensation during the pendency of the main claim petition under Section 166 of the new Act which is required to be adjudicated upon after full-fledged enquiry and after recording evidence, the order under challenge is subject to adjustment as per final judgement and award that may be recorded in the pending main claim petition. Obviously, at this stage, we are not inclined to interfere with the impugned order. Nonetheless, it would be expedient to make necessary observation and direction so that the original main claim petition is in any way not intercepted 'en route' leaving the impugned order as final. Therefore, learned advocate Mr. Shah for the respondents has, rightly, assured that the original claimants shall not withdraw the pending main claim petition. The claimants shall file an undertaking before the Trial Court within four weeks from today that they shall pursue the main claim petition to its legal and logical end and they shall obtain a decision and award on merits and they shall not permit the impugned claim petition to be dismissed for default or withdrawn.

5. Pursuant to the interim direction, the appellant original opponent No. 3 the New India Assurance Company ltd. has deposited some part of the amount of the interim compensation as per the interim compensation order. The appellant original opponent No. 3 in the main claim petition is directed to deposit the remaining amount due and payable under the impugned order below Exh. 26-D under Section 163-A of the Act within a period

of two months from today before the Tribunal concerned. The amount of Rs. 25,000/- deposited before this court under Section 173 of the Act is ordered to be transmitted to the Tribunal concerned by the Registry and it will be open for the Tribunal to pass appropriate order for disbursement.

6. We may also make it clear that it will be open for the Tribunal to appropriately make apportion of the amount of interim award amongst the claimants in light of the celebrated principles of law. The Tribunal is directed to pay 20% of the total amount to be deposited before the Tribunal by way of account payee cheque to the respondents original claimants. The remaining 80% of the total amount shall be invested in a nationalised bank/Scheduled bank for a long period but not less than for a period of five years and the amount of interest which shall accrue due therefrom periodically, shall be payable to the respective claimants and in case of minor to the guardian of the minors for their welfare and better upkeepment. In the event of expiry of the tenure of FDRs before the date of disposal of the main petition, the Tribunal shall extend the period of deposit till the main claim petition is heard after full-fledged enquiry.

7. After the main petition is heard on merits, the amount of award shall be subject to this order, the amount under the interim order and also it will be subject to the proper directions in light of the celebrated principles of law so as to see that the amount of compensation is not being frittered away and the main object of compensation is preserved and observed.

8. It is also clarified that the amount coming to the share of minors even in the first part of 20% shall also be invested in so far as the minors are concerned and the interest which shall accrue, due therefrom, shall be payable to the guardian of the minors till they attain majority for their welfare.

9. In view of the aforesaid observations and directions, the appeal shall stand disposed of without entering into the merits thereof.

(J.N. BHATT, J)

(K.M. MEHTA, J)

(pkn)